

THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

DW _____

FREEDOM VILLAGE CONDOMINIUM ASSOCIATION

AND

NORTH COUNTRY WATER SUPPLY, INC.

JOINT PETITION TO TRANSFER WATER UTILITY ASSETS AND
FOR EXEMPTION FROM REGULATION

Now come Freedom Village Condominium Association (the Association) and North Country Water Supply, Inc. (North Country) and jointly petition the Commission for approval for North Country to transfer to the Association all of the water utility system and assets which provides water to the owners of units in the Freedom Village Condominium in Freedom, New Hampshire.

The Association also requests a determination that upon transfer of the utility assets to the Association, the Association shall be exempt from regulation as it is not a "public utility" as defined by statute.

In support of this Petition, the Parties say the following:

1. The Association consists of 66 units located in Freedom, New Hampshire. For purposes of this Petition, the address of the Association is c/o Sanford Roberts, Esq., Box 4608, Portsmouth, NH 03802.
2. North Country is a utility company whose address is Box 180, Barrington, NH 03825. North Country's only customer is Freedom Village. North Country supplies all of the water for the 66 residential condominium units in the Association and has done that since 1988.
3. In 1995, North Country received an exemption from regulation by an Order from the PUC dated June 26, 1995. See Order # 21,709; DE 93-197.
4. The Parties have negotiated a sale of all of North Country's assets that are used to supply water to the Association. A copy of the Asset Purchase Agreement is attached hereto as an exhibit.
5. Pursuant to RSA 374:22 and RSA 374:30 the Parties seek the approval from the Commission for this transfer of assets.
6. The Association is a not for profit entity and is governed by vote of the owners and its duly elected Board of Directors. It will administer the system solely for the benefit of the unit

owners and not provide water to any other entities or individuals. It is anticipated that the Association will hire an experienced water company to operate the system on a contract basis for the benefit of the unit owners.

7. RSA 362:4-VII states:

VII. (a) A homeowners' association, including but not limited to a condominium unit owners' association, shall not be considered a public utility under this title by virtue of providing water service if:

(1) The service is furnished only to members of the association or the occupants of their residential units; and

(2) The association is organized on a not-for-profit basis and is democratically controlled by the owners of the residential units and not the developer or subdivider thereof.

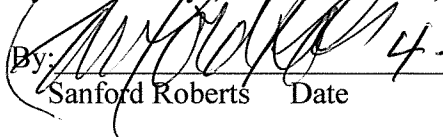
(b) Such a homeowners' association is one consumer for purposes of paragraph I, and its individual members or their lessees shall not be treated as individual consumers.

Pursuant to these provisions, the Association is not a "public utility" under the statute.

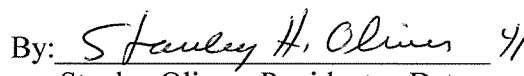
WHEREFORE, the Petitioners respectfully request that the Commission:

- A. Approve the proposed transfer from North Country to the Association upon the terms and conditions as specified in the Asset Purchase Agreement.
- B. Rule, without the necessity of a public hearing, that upon transfer of the assets, the Association will not be subject to regulation by the Commission as a "public utility" and,
- C. Grant such other and further relief as it deems just and proper.

Respectfully submitted, Freedom Village Condominium Association
By its Attorneys, Sanford Roberts, PA

By:  4-7-10
Sanford Roberts Date

North Country Water Supply, Inc.

By:  4/2/10
Stanley Oliver, President Date

ASSET PURCHASE AGREEMENT

AGREEMENT made this 5th day of March, 2010, by and between the FREEDOM VILLAGE HOMEOWNERS' ASSOCIATION c/o Sanford Roberts, Esq., Box 4608, Portsmouth, NH 03802 (hereinafter referred to as the "Association" or the "Buyer") and NORTH COUNTRY WATER SUPPLY, INC. with an address of Box 180, Barrington, New Hampshire 03835 (hereinafter referred to as "North Country" or "Seller").

WHEREAS, SELLER owns property rights and assets used to provide water to the owners of the Condominium units in the Freedom Village Condominium including easement rights (if any), water pumps, pipes and related water service equipment and improvements on the Condominium property in Freedom, New Hampshire.

WHEREAS, the SELLER desires to sell and BUYER wishes to purchase all of the ASSETS and rights utilized by Seller to supply water to the Condominium units,

NOW THEREFORE, the SELLER and BUYER agree as follows:

1. SALE AND PURCHASE OF ASSETS:

The SELLER agrees to sell and convey to BUYER and the BUYER agrees to purchase from the SELLER all easement rights, piping, pumps and any related equipment owned by Seller necessary to supply the units with water service and all other assets, and transferable permits (if any) necessary for delivery of the water to the units.

Upon signing this Agreement, SELLER shall make available to BUYER for inspection, SELLER'S records regarding operation of the System including maintenance records and any pertinent plans. At the time of payment of the purchase price, copies of these documents shall be provide to BUYER.

A list of the tangible ASSETS to be transferred is attached hereto as Exhibit A.

2. PURCHASE PRICE / TIME OF TRANSFER:

The purchase price for all of the ASSETS and records referenced in paragraph 3 shall be \$20,000.00 to be paid in cash at the time all of the following has occurred:

- a. delivery of a Bill of Sale for the tangible equipment,
- b. assignment of rights necessary to operate the system deemed necessary by the Association's counsel, if any,
- c. delivery of all plans and relevant records referred to above, and
- d. approval of the sale by the Public Utilities Commission.

The delivery of items a. – c. and payment of the purchase price shall take place within 5 days of approval by the PUC.

3 SELLER'S REPRESENTATIONS AND WARRANTIES:

- a. ~~SELLER represents that all of the equipment utilized in the operation~~ of the water SYSTEM is in good working order, has been regularly maintained, and SELLER knows of no repairs needed to any of the tangible ASSETS except:

Recommend drainage system reconfiguration to connection to septic system.

- b. ~~SELLER warrants that any licenses, permits, easements or other approvals~~ necessary for operation of the SYSTEM are current and valid. SELLER makes no representations as to whether BUYER needs to obtain any license or permits in order to operate the SYSTEM after transfer of the ASSETS.

4. BILL OF SALE OR ASSIGNMENT.

SELLER shall convey title to the ASSETS and all items of personal property including permits, licenses, plans, test data and water quality reports by bill of sale or appropriate assignment, and by duly executed quitclaim deed if a deed is necessary, conveying good and clear title free from all encumbrances.

5. NOTICES.

Whenever it shall be necessary or appropriate under the provision of this Agreement that notice be given by one party to the other, such notice shall be given in writing at the address listed at the beginning of this Agreement.

6. SPECIFIC PERFORMANCE

~~In the event that after signing this Agreement and approval by the PUC,~~ Seller fails or refuses to convey the Assets as agreed, BUYER shall have the right to enforce this Agreement by a decree of Specific Performance.

7. PUC APPROVAL

~~The New Hampshire Public Utilities Commission has indicated that its approval~~ of the sale is required. A draft Petition for Approval of this sale to the PUC has been provided to Seller by Buyer's counsel. Within 5 working days of the Seller signing this Agreement and the Petition, Buyer's counsel shall submit the Petition to the PUC.

In the event that the PUC shall not approve the sale, either party may give written notice to the other party of its intent to terminate this Agreement, and in that event, neither party shall be ~~under any obligation to perform any of the obligations set forth herein.~~

In witness whereof the parties have signed this Agreement on the dates set forth below.

North Country Water Supply, Inc.

By: _____
Stanley Oliver, President Date

Freedom Village Condominium Association

By: Thomas Thibault PFVCA
Thomas Thibault, President Date April 5, 2010

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Recommend drainage system reconfiguration to connection to septic system.

- b. SELLER warrants that any licenses, permits, easements or other approvals necessary for operation of the SYSTEM are current and valid. SELLER makes no representations as to whether BUYER needs to obtain any license or permits in order to operate the SYSTEM after transfer of the ASSETS.

4. BILL OF SALE OR ASSIGNMENT.

SELLER shall convey title to the ASSETS and all items of personal property including permits, licenses, plans, test data and water quality reports by bill of sale or appropriate assignment, and by duly executed quitclaim deed if a deed is necessary, conveying good and clear title free from all encumbrances. *All equipment is being sold as is where is with no warranties of any kind other than as set forth in this Agreement.*

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Whenever it shall be necessary or appropriate under the provision of this Agreement that notice be given by one party to the other, such notice shall be given in writing at the address listed at the beginning of this Agreement.

6. SPECIFIC PERFORMANCE

In the event that after signing this Agreement and approval by the PUC, Seller fails or refuses to convey the Assets as agreed, BUYER shall have the right to enforce this Agreement by a decree of Specific Performance.

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In witness whereof the parties have signed this Agreement on the dates set forth below.

North Country Water Supply, Inc.

By: Stanley H. Oliver
Stanley Oliver, President Date

Freedom Village Condominium Association

By: _____
Thomas Thibault, President Date

EXHIBIT A – PETITION TO TRANSFER ASSETS

North Country water Supply, Inc
P O Box 697
Barrington, NH 03825
603 868 7200

Mr Sanford Roberts
Freedom Village Condo Owners Assn
Freedom, NH

2-9-10

RE Water system sale

Mr Roberts,

The following equipment will be included in the sale of the water system. However, smaller items left at the system, but not mentioned shall be included.

9000 gallon atmospheric storage tanks	(2)
2500 gallon pressure tank	(1)
5 hp Sta-Rite booster pumps	(2)
1.5 hp Grundfos SQ 20 gpm	(2)
Ion exchange tanks with timers	(6)
Well X Trol pressure tank	(1)
Wells and attachments and piping	(2)
Abandoned wells	(3)
Control panel for booster pumps	(1)
Control panel for well pumps	(1)
Air compressor and controls	(1)
Sump pump	(1)
All piping in pump house	
All distribution piping outside pump house to units	
All easements for distribution piping	

I believe this is a complete inventory of the water system that will be sold to the home owners association.

Regards,

Stanley H Oliver